**S.B. CIVIL MISC. APPEAL NO.1659/2006**
(Girijesh Vs. Ratan Singh & others)

Date of Order :: 23rd February 2007

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr.B.L.Choudhary for
Mr.J.R.Beniwal for the appellant

By way of this appeal against the award dated 07.06.2006 made by the Motor Accidents Claims Tribunal, Nathdwara in Claim Case No.30/2005 the claimant seeks enhancement over the amount of Rs.82,000/- together with interest at the rate of 6% per annum awarded by the Tribunal as compensation for the loss suffered by him due to the bodily injuries sustained and damage caused to his motorcycle in a vehicular accident.

The accident occurred on 03.01.2005 when the claimant riding his motorcycle bearing registratin No.RJ 30 3M 3821 was hit by an oncoming jeep bearing registration No.GJ 01 HH 309. As a result of the accident, the claimant suffered grievous injury of fracture of upper one-third of right tibia and fibula bones and his motorcycle was also damaged. The claimant sought compensation against the persons related with the aforesaid jeep for the loss suffered by him stating his age at 31 years and his earning Rs.8,000/- per month while working as a teacher in Vidhya Niketan School at Khamnore

and so also while working as an agent with Sahara India and from his job of videography. After framing of necessary issues and taking evidence, the Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid jeep and held the non-applicants liable for compensation.

Taking up quantification of compensation, the Tribunal found from the injury report Ex.7 and X-ray report Ex.9 that the claimant had suffered one fracture injury; and referred to the disablement certificate Ex.17 stating his permanent disablement at 20% and allowed a sum of Rs.45,000/- in relation to the injury and disablement. On the bills of treatment and related expenditure, the Tribunal found that the same doctor has issued two receipts Ex.23 and Ex.22 on 07.01.2005 that did not appear proper; and considered it appropriate to allow only the amount stated in receipt Ex.22 at Rs.14,300/- The Tribunal further disallowed an amount of Rs.415/- stated in the bill Ex.39 from one M/s. Krishna Juice and Fal Bhandar for want of requisite proof and corroboration. The Tribunal allowed the amount of remaining bills in the sum of Rs.9,102/-; and with addition of amount of Rs.14,300/- of the receipt Ex.22, allowed in total Rs.23,402/- towards expenditure. The Tribunal noticed that though the transportation bills Ex.19 and 20 were also not proved by producing the relevant person but allowed an amount of

Rs.2,000/-on transportation. The Tribunal further allowed Rs.1,000/- towards special diets and attendants; and Rs.2,000/- towards mental and physical agony and sufferings. The Tribunal observed that the claimant has not established any loss of income but looking to the period of treatment and bed-rest allowed a sum of Rs.5,000/-towards loss of income. The Tribunal further allowed Rs.3,000/- towards property damage for the loss caused to the motorcycle as corroborated by the mechanical report Ex.9 but not the entire amount of the bill Ex.47. In this manner, the Tribunal assessed total loss for the claimant at Rs.81,402/- and allowed compensation in the round figure of Rs.82,000/- and also interest at the rate of 6% per annum from the date of filing of claim application.

The award aforesaid is sought to be questioned in this appeal as being low and inadequate. It has been contended that the Tribunal has allowed a meagre amount towards compensation and has failed to consider that the claimant has undergone a long treatment and then has suffered permanent disablement to the extent of 20%; that the claimant's earning prospects got receded substantially and so also he suffered loss of amenities of life and the amount allowed by the Tribunal remains too low and grossly inadequate in comparison to the loss caused to the claimant. It has also been contended that the Tribunal has erred in not

allowing reasonable amount towards motorcycle repairs.

Having given a thoughtful consideration to the submissions made by learned counsel for the appellant and having examined the record, this Court is satisfied that the amount awarded by the Tribunal towards compensation cannot be said to be lower than that of just compensation admissible in this case; and the appeal does not merit admission.

It is true that the claimant had suffered fracture injury of upper one third of right tibia and fibula bones as stated in the X-ray report Ex.8; but it appears that ultimately the injury healed; and it is not correct to suggest that the claimant had suffered 20% permanent disablement. Even from the medical examination report Ex.17 drawn by the doctors who have not treated upon the claimant, only this much is available that because of restriction of motion of the right knee and right leg, the Medical Board was of opinion that there was permanent impairment at '20% of the affected part'. Such certificate does not make out a case of total permanent disablement of the whole body at 20%.

Then the claimant has suggested his earning Rs.8,000/- per month while working as a teacher and as agent of Sahara India and in videography. However, in relation to the later two jobs i.e. of agency and videography, there is not

a semblance of documentary evidence available on record so as to consider if there was any such component in the earnings of the claimant. Moreover, for the injuries sustained and the alleged disablement, it is difficult to countenance the submission that such income, if at all earned, got receded because of the after-effects of the injury.

The claimant has put his case of loss of income all shrouded in obscurity. Apart from the fact that there is no evidence about earnings from agency and videography, even in respect of his earning as a teacher in private school, the claimant has stated in the claim application that he was getting salary of Rs.2,000/- per month. The claimant suggested in his deposition before the Tribunal that he was earlier getting Rs.3,000/- per month from the school and now as he could take lesser periods, his salary has been reduced to Rs.2,000/- per month. This statement made by the claimant on 02.03.2006 before the Tribunal is directly contradicted by the certificate dated 01.03.2006 produced by him on record as Ex.45. Though it has been suggested in the said certificate Ex.45 that the claimant remained on leave in the months of January, February and March 2005 and did not get salary for those months but it has also been stated that he was working on the post of teacher and that his salary was Rs.3,000/- per month. There is not even a whisper in the

certificate about reduction of salary of the claimant nor any other evidence has been produced on record so as to corroborate the submission of the claimant about reduction of hissalary.

It is also noticed while scanning through the record that in the batch of the bills, receipts and vouchers produced by the claimant, everything related to the treatment expenditure and so also dietary expenditure and so also transportation charges have been placed on record. The cash memo Ex.35 is of food charges of 'Gujarati Thali' at Rs.1,000/- for 5 days from 04.01.2005 to 08.01.2005; likewise the bill Ex.26 in the first place raises doubt about the stated date as 09.01.2004 but leaving that aside, the same is in the sum of Rs.3,006/- towards ambulance charges. It is noticed that Ex.22 and Ex.23 are respectively receipt Nos.2026 and 2027 of the same date 07.01.2005 issued by the same doctor. While the receipt Ex.22 states about consultation charges at Rs.300/-and treatment fees at Rs.14,000/-, the receipt Ex.23 states about treatment fees at Rs.10,270/-; and both the receipts state that treatment fees include operation charge, theatre charge, hospital stay, dressings, injunctions, plaster, X rays, implants, professional fees etc. Such fee receipts rather raise doubt about authenticity of other charges by the same hospital later on as stated in the other receipts.

On a comprehensive examination of the material available on record, this Court is satisfied that the amount allowed by the Tribunal in the sum of Rs.23,402/- towards bills of expenditure and further Rs.2,000/- towards transportation and another Rs.1,000/- towards diets and attendants cannot be said to be inadequate or insufficient. The Tribunal has allowed an amount of Rs.45,000/-, though in lump sum, with reference to the so-called permanent disablement. On the facts and in the circumstances of this case, this Court is clearly of opinion that such amount of Rs.45,000/- towards so-called disablement could only be said to be rather unwarranted and highly excessive. The Tribunal has further allowed Rs.2,000/- towards pains and sufferings and Rs.5,000/- towards loss of income and Rs.3,000/- towards damage to the motorcycle.

On the whole, the amount of Rs.82,000/- as allowed by the Tribunal in the present case could only be said to be much in excess of the reasonable compensation; and a claim for enhancement thereupon could only be rejected as baseless.

The appeal fails and is, therefore, dismissed summarily.

**(DINESH MAHESHWARI), J.**

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